

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Clipper Bay) DOCKET NO. 920168-TL
Condominium Association, Inc.,) ORDER NO. PSC-92-0625-FOF-TL
Cinnamon Cove Terrace Condominium) ISSUED: 07/07/92
I Association, Inc., Estero Sands)
Condominium Association, Inc.,)
and The Sand Caper Condominium)
Association, Inc. against UNITED)
COMPANY OF FLORIDA for expedited)
relief to cease alleged charging)
of commercial rates for)
residential service.)
_____)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION
ORDER REGARDING ELEVATOR TELEPHONES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On February 19, 1992, Clipper Bay Condominium Association, Inc. and several other condominium associations (jointly Clipper Bay) filed complaints against United Telephone Company of Florida (United). The complaints were filed by Mark R. Benson, who is a certified community association manager. The complaints are substantively identical and allege that United has, for a number of years, been inappropriately charging business rates for elevator telephones in the various condominiums. Clipper Bay asserts that it is the policy of the State of Florida that condominiums are residential. Clipper Bay further alleges that United's tariffs provide that residential rates should apply.

On March 16, 1992, United filed its Answer to Clipper Bay's Complaint. It is United's position that the subscribers of the telephones at issue are the respective condominium associations; that the purpose of the telephones is primarily business; that under United's tariffs the elevator telephones are properly billed as business; that it is the subscriber of a service whose use

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defines it as a business or a residence; that the \$35 per month rate alleged by Clipper Bay to be charged for the telephones exceeds the actual charge by \$12.80 to \$14.60 per month.

United also filed a Motion to Dismiss pursuant to Rule 25-22.037, Florida Administrative Code. The Company asserts that the complaints filed by Mr. Benson should be dismissed because he is not authorized to practice before the Commission pursuant to Rule 25-22.008, Florida Administrative Code and the filing of the complaints constitutes the practice of law.

On March 24, 1992, the Office of Public Counsel (OPC) filed a Response to United's Motion to Dismiss. Therein, OPC argues that United does not have standing to object to the adequacy or representative capacity of the complainant's chosen representative and even if United did have standing to so object that dismissal of the complaint is not the appropriate remedy. It is OPC's view that the appropriate remedy would be disqualification of the representative and not dismissal of the complaints.

The condominium associations did not respond to United's Motion to Dismiss.

Upon review, we accept OPC's argument and deny the Company's Motion to Dismiss. However, Mr. Benson is neither a Class A nor B practitioner and is not authorized to practice law before the Commission. Should this matter go to hearing, Mr. Benson shall be disqualified as legal representative of the various condominium associations.

Section A2 C.5 of United's tariff sets forth the criteria for determining whether business or residential rates shall apply. Subpart a. of that tariff section provides that the rate depends on the character of the use to be made of the service. In this case, the primary use would be to call for help in the event of an emergency. The actual users of the service would normally be the residents of the condominiums. The character of use from this point of view would not be considered business.

However, subpart b.(6) of the aforementioned tariff section, provides that business rates shall be charged where the subscriber's use of the service is for business purposes. In this case, the subscriber is the condominium association and its use of the service is to provide for the safety and well-being of the condominium residents and other users of the elevators. The character of use would be business from the subscriber's point of view.

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Based on the Company's current tariff, we find that United has interpreted its tariff correctly in charging business rates to condominium associations for elevator telephone service. However, we note that for electric service, the common areas of condominiums, apartment houses and boarding houses are billed as residential. Thus, an issue concerning the appropriate rates to charge for telephone service in condominium elevators has been included in the United Telephone rate case (DN 910980-TL).

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that United Telephone Company of Florida's Motion to Dismiss is hereby denied. It is further

ORDERED that the complaints of the various condominium associations are denied. It is further

ORDERED that under the current tariff of United Telephone Company of Florida, the elevator telephones at issue are appropriately charged business rates. It is further

ORDERED that this docket shall be closed at the end of the proposed agency action protest period, assuming no timely protest is received.

By ORDER of the Florida Public Service Commission, this 7th day of July, 1992.



STEVE TRIEBKE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 28, 1992.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.